

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

7 HENRY G LUKEN III,

8 Plaintiff,

9 v.

10 CHRISTENSEN GROUP  
INCORPORATED, et al.,

11 Defendants.

12 CASE NO. C16-5214 RBL

13 ORDER ON MOTION FOR  
14 PROTECTIVE ORDER

15 THIS MATTER is before the Court on Defendants Christensen Group Incorporated  
16 (CGI) and Christensen Trust's Motion for Protective Order [Dkt. #148]. Plaintiff Henry Luken  
17 noticed depositions to several organizations pursuant to Fed. R. Civ. P. 30(b)(6), including CGI,  
18 the Christensen Trust, the accounting firm of Fordham Goodfellow, and the law firm of English  
19 & Marshall. CGI and the Christensen Trust seek a protective order from the Court, arguing that  
20 Luken's organizational deposition notices are facially overbroad, are not proportional, and would  
21 place an unjustifiable burden on the deponents. Luken contends that his deposition notices are  
22 reasonable and targeted to the discovery of relevant information in the case.

23 **I. LEGAL STANDARD**

24 The Federal Rules of Civil Procedure and the Local Civil Rules for the Western District  
25 of Washington govern discovery and the process by which a party notices depositions. Fed. R.  
26 Civ. P. 30(b)(6) provides:

1       **Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a  
2 party may name as the deponent a public or private corporation, a partnership, an  
3 association, a governmental agency, or other entity and *must describe with*  
4 *reasonable particularity the matters for examination.* The named organization must  
5 then designate one or more officers, directors, or managing agents, or designate  
6 other persons who consent to testify on its behalf; and it may set out the matters on  
which each person designated will testify. A subpoena must advise a nonparty  
organization of its duty to make this designation. *The persons designated must*  
5 *testify about information known or reasonably available to the organization.* This  
6 paragraph (6) does not preclude a deposition by any other procedure allowed by  
these rules.

7 (Emphasis added). “The goal of the Rule 30(b)(6) requirement is to enable the responding  
8 organization to identify the person who is best situated to answer questions about the matter.”

9       See Wright & Miller, 8A Federal Practice & Procedure § 2103 at 454 (3d ed.). This Rule was  
10 intended to prevent the officers or managers of larger organizations from “bandying,” the  
11 practice of disclaiming knowledge of facts clearly known to the organization. *Id.* at 452–53.

12       Rule 30(b)(6) depositions, like all other discovery requests are subject to Fed. R. Civ. P.  
13 26’s proportionality standards. *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 254 F.R.D.  
14 227, 233 n.3 (E.D. Pa. 2008). Local Civil Rule 26(f) provides “[t]he proportionality standard set  
15 forth in Fed. R. Civ. P. 26(b)(1) must be applied in every case when parties formulate a  
16 discovery plan and promulgate discovery requests. To further the application of the  
17 proportionality standard in discovery, discovery requests and related responses should be  
18 reasonably targeted, clear, and as specific as possible.” In circumstances where a party abuses  
19 the discovery process, Fed. R. Civ. P. 26(c)(1) permits a party from whom discovery is sought to  
20 move for a protective order to safeguard the party from annoyance, embarrassment, oppression,  
21 undue burden, or expense.

22       While Fed. R. Civ. P. 26(b)(1) permits a party to “obtain discovery regarding any  
23 nonprivileged matter that is relevant to any party’s claim or defense,” courts have limited  
24 discovery where the breadth of subjects and number of topics identified in a 30(b)(6) deposition

1 notice renders a responding party's efforts to designate a knowledgeable person unworkable. *See*  
2 *e.g., Apple Inc., v. Samsung Elec. Co., Ltd.*, 2012 WL 1511901, at \*2 (N.D. Cal. Jan. 27, 2012).

3 **II. DISCUSSION**

4 **A. Protective Order**

5 Luken sent Rule 30(b)(6) deposition notices to CSL Defendants counsel for the following  
6 organizations: CGI, the Christensen Trust, the accounting firm of Fordham Goodfellow, and the  
7 law firm of English & Marshall. *See* Dkt. 149-1; Dkt. 149-2; Dkt. 149-3. Defendants contend the  
8 deposition notices are overly burdensome and seek information having "little to do with those  
9 entities' own activities and organizational knowledge and everything to do with CSL's." Dkt.  
10 154 at 4. Luken asserts that he seeks relevant information and is "entitled to conduct discovery  
11 using all the permissible methods including entity depositions under Rule 30(b)(6), to the full  
12 scope of permissible discovery and in any sequence." Dkt. 152 at 6.

13 The Court has reviewed all of the challenged 30(b)(6) deposition notices and concludes  
14 that they suffer from the same flaws as Luken's overbroad contention interrogatories and blanket  
15 discovery requests that the Court previously struck. *See* Dkt. 125. For example, Luken directs  
16 each of the organizations to:

17 . . . present one or more representatives properly prepared to testify as to all  
18 information known or reasonably available (after a reasonable investigation),  
19 including information in the possession of your counsel, to you on the topics set out  
20 below. Without limiting the scope of each topic, each topic includes (1) the extent  
21 and dates of your involvement with respect to the topic; (2) the substance of facts  
22 and details related to each topic; (3) the identity of persons with personal knowledge  
23 or discoverable information relating to the topic; (4) the nature, identity substance,  
24 and location of all Documents evidencing or relating to each topic; (5) the date,  
nature, and persons involved in any communications relating to the topic; (6) any  
damage or prejudice to CSL or any party arising from or related to any topic; and  
7 the evidence supporting or contradicting any claim, assertion of misconduct, or  
defense relating to the topic. This listing of specific examples or sub-topics is not  
intended to and does not limit the breadth of any topic. Topics intentionally overlap  
and do not limit any other topic.

1 Dkt. 149-1 at 3–4; Dkt. 149-2 at 3–4; Dkt. 149 at 3–4. Another request directs the designees for  
2 CGI and the Christensen Trust to testify on “[t]he factual basis, details, persons involved,  
3 corroborating or contradicting evidence, and other details of Defendants’ affirmative defenses”  
4 for fourteen different topics, most of which relate to CSL. *Id.* at 14–15.

5 The purpose of Rule 30(b)(6) is to require an organization to identify and designate a  
6 witness who is knowledgeable on the noticed topic, particularly where the noticing party is  
7 unable to itself identify an appropriate witness because that knowledge lies within the  
8 organization. *See* Wright & Miller, 8A Federal Practice & Procedure § 2103. This rule does not  
9 extend to burdening the responding parties with production and preparation of a witness on every  
10 facet of the litigation, as Luken’s deposition notices seek to do. *See Apple*, 2012 WL 1511901 at  
11 \*2. While the topics identified in the deposition notices may be relevant, the discovery rules also  
12 require that deposition notices be proportional and describe with reasonable particularity the  
13 matters of examination. Luken’s deposition notices do not meet this standard, and any benefit to  
14 Luken is offset by the burden, expense, and impracticable demand imposed on the deponents.

15 Luken’s deposition notices to CGI and the Christensen Trust are also problematic in that  
16 they seek to compel those organizations to answer questions that largely have to do with the  
17 inner workings of CSL.<sup>1</sup> Rule 30(b)(6) only requires that an organization’s designee “testify  
18 about information known or reasonably available to the organization.” The rule “does not require  
19 one entity which is not under the control of a second entity to inquire into and testify as to the  
20 knowledge of the second entity.” *DSM Desotech Inc. v. 3D Systems Corp.*, 2011 WL 117048, at  
21 \*8 (N.D. Ill. Jan. 12, 2011) (citing *Covington v. Semones*, 2007 WL 1052460, at \*1 (W.D. Va.

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24 <sup>1</sup> Indeed, much of topics covered by Luken’s deposition notices seem more appropriately  
directed towards the individual CSL Defendants.

1 Apr. 5, 2007)). Although there are some commonalities, CGI and the Christensen Trust are not  
2 CSL, nor are they under the control of CSL. The Court will not require CGI and the Christensen  
3 Trust's designees to familiarize themselves with the broad range of topics contained in Luken's  
4 30(b)(6) notices that are unrelated to those organizations. Accordingly, Defendants' motion for  
5 protective order [Dkt. 148] is **GRANTED**.

6 **B. Revised 30(b)(6) Notices**

7 The Court will allow Luken one final opportunity to revise his 30(b)(6) deposition  
8 notices. These notices should be proportional to the needs of the case and appropriately tailored  
9 to the information reasonably within the scope of each organization's relationship to this lawsuit  
10 (i.e. their counterclaims).<sup>2</sup> The deposition notices should also be narrowed to reflect that the  
11 Court has dismissed Luken's claims under the Washington vessel dealer trust account statute  
12 (RCW § 88.02.770). *See* Dkt. 159. If Luken does not narrow his deposition notices to  
13 information reasonably within the scope of each organization's involvement in the lawsuit, he  
14 should be prepared to face additional sanctions and go to trial with the discovery currently  
15 available to him.

16 **C. Sanctions**

17 The Court's patience with Luken's discovery tactics has run out. The present motion  
18 illustrates a reoccurring theme involving Luken's (1) overbroad discovery requests, (2) insistence  
19 that his requests are reasonable, (3) questioning opposing counsel's ethics and motives in  
20 objecting to his requests, and (4) involvement of the Court after failing to engage in reasonable  
21 efforts to meet and confer. Luken bemoans his lack of discovery in this case: "[w]ith no

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24 <sup>2</sup> The Court declines movants' invitation to treat the Christensen Trust as an "estate" that is  
exempt from Rule 30(b)(6) depositions.

1 significant interrogatory answers and limited relevant documents, Mr. Luken is nearing his last  
2 opportunity to discover the evidence supporting and factual basis for Defendants' allegations,  
3 defenses, and counterclaims." Dkt. 152 at 5. This is largely a problem of his own making.  
4 Luken's discovery tactics appear more designed to make this litigation drawn out and difficult  
5 than to lead to production of discoverable information. Luken has lost all four previous discovery  
6 disputes, and has been sanctioned twice. The Court cannot recall ever having to sanction a party  
7 for its conduct in discovery more than once, yet the Court now sanctions Luken for a third time.

8 Pursuant to Fed. R. Civ. P. 37(a)(5)(A), the Court awards movants' reasonable expenses  
9 including attorney's fees incurred in bringing this motion. Defendants shall submit for the  
10 Court's review their fees incurred in preparing and replying to the present motion for protective  
11 order within seven days of this order.

### 12 III. CONCLUSION

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- 14 • Defendants' Motion for Protective Order [Dkt. #154] is **GRANTED**.
- 15 • Plaintiff Luken has until **May 11, 2018** to narrow the scope of his Rule 30(b)(6)  
16 deposition notices for CGI, the Christensen Trust, Fordham Goodfellow, and English  
& Marshall, in a manner consistent with this order.
- 17 • Movants are entitled to a fee award associated with bringing this motion and shall  
18 submit for the Court's review their fees incurred in preparing and replying to the  
19 present motion by **May 4, 2018**.

20 IT IS SO ORDERED.

21 Dated this 27<sup>th</sup> day of April, 2018.

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24 Ronald B. Leighton  
United States District Judge